

1 Kristopher P. Diulio (SBN 229399)

2 kdiulio@FordDiulio.com

3 Brendan M. Ford (SBN 224333)

4 bford@FordDiulio.com

5 Tyler E. Sanchez (SBN 299131)

6 tsanchez@FordDiulio.com

7 FORD & DIULIO PC

8 695 Town Center Drive, Suite 700

9 Costa Mesa, California 92626

Telephone: (714) 384-5540

Facsimile: (844) 437-7201

7 Attorneys for Defendants

8 PAUL PEJMAN EDALAT; OLIVIA

9 KARPINSKI; FARAH BARGHI; BLUE

TORCH VENTURES, INC.; and

LIWA, N.A., INC.

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **SOUTHERN DIVISION**

13 BRUCE CAHILL, an individual, GREG
14 CULLEN, an individual, SHANE SCOTT,
15 an individual, RON FRANCO, an
individual, and PHARMA PAK, INC. a
California Corporation,

16 Plaintiffs,

17 v.

18 PAUL PEJMAN EDALAT, an individual,
19 OLIVIA KARPINSKI, an individual,
20 FARAH BARGHI, an individual,
SENTAR PHARMACEUTICALS, INC., a
Nevada corporation, BLUE TORCH
21 VENTURES, INC., a Wyoming
Corporation, LIWA, N.A., INC., a
22 Wyoming Corporation, SENTUS LAND
MANAGEMENT, LLC, a Wyoming
23 Limited Liability Company,

24 Defendants.

Case No. 8:16-cv-00686-AG-DFM

**PAUL EDALAT'S REPLY IN
SUPPORT OF EDALAT'S MOTION
TO DISMISS PLAINTIFFS' SECOND
AMENDED COMPLAINT**

Courtroom: 10D
Judge: Hon. Andrew J. Guilford

Hearing:
February 6, 2017
10:00 a.m.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

3 Plaintiffs' Opposition to Edalat's Motion to Dismiss Plaintiffs' Second Amended
4 Complaint ("Opposition") is plagued with the same deficiencies as the Second
5 Amended Complaint ("SAC"). Instead of addressing the deficiencies identified in the
6 Motion, the Plaintiffs in the Opposition simply copy voluminous sections of the SAC
7 and make conclusory arguments. Further, the Opposition ignores the obvious
8 inconsistencies of the facts that the SAC alleges. Because Plaintiffs have failed to
9 address in the Opposition the fatal pleading issues raised by the Motion, the Court
10 should dismiss the claims addressed in the Motion with prejudice.

II. THE OPPOSITION FAILS TO ADDRESS THE FATAL DEFICIENCIES OF PLAINTIFFS' FEDERAL SECURITIES CLAIMS AND STATE FRAUD CLAIMS AGAINST EDALAT

Counts One through Four of the Second Amended Complaint allege violations of Section 10(b) of the Exchange Act and Rule 10b-5. The Motion stated that the broad conclusory statements alleged in the SAC do not satisfy the pleading requirements of Federal Rule of Civil Procedure 9(b), the Private Securities Litigation Reform Act (“Reform Act”), or the heightened pleading standard of *Twombly/Iqbal*. The Opposition spends many pages reciting voluminous excerpts from the SAC in response to Edalat’s Motion. The Opposition, however, fails to explain how the excerpts satisfy the pleadings standards identified in the Motion. Rather, it simply regurgitates the deficient allegations of the SAC.

A. Plaintiffs Have Not Established a Connection Between Edalat's Alleged Statements or Omissions and Plaintiff's Investments

25 The Opposition does not address how the SAC sufficiently pleads the requisite
26 facts to establish a causal connection between the alleged misrepresentation or
27 omissions and Plaintiffs' investment in Pharma Pak. The Opposition states in a broad
28 and conclusory statement that, "Each Plaintiff alleges that they purchased the Pharma

1 Pak securities relying on the materially false and misleading statements described.”
 2 Plaintiffs’ Opposition at p. 11:1-3. Even under the “broad interpretation” of “in
 3 connection with the purchase of securities”, a conclusory statement does not satisfy the
 4 pleading requirements, where the statement is devoid of facts as to the reliance on
 5 misrepresentations or omissions in connection with the purchase of securities. Here, the
 6 Opposition does not address how the Plaintiffs relied on alleged misrepresentations
 7 regarding Global Holdings in connection with the purchase of stock in Pharma Pak.
 8 Additionally, the SAC and Opposition fail to address the timing of the alleged
 9 misrepresentations or omissions in relation to the purchase of stock in Pharma Pak. As
 10 such, the SAC does not meet the requirement that misrepresentations be alleged with
 11 particularity as to when the misrepresentations occurred and how that timing
 12 “coincided” with the purchase of securities.

13 **B. Plaintiffs Have Not Alleged That Edalat Owed a Duty To Disclose
 14 His Bankruptcy Proceedings**

15 Plaintiffs’ Opposition relies on *City of Royal Oak Ret. Sys. v. Juniper Networks, Inc.*, 880 F. Supp.2d 1045, 1066 (N.D. Cal. 2012) for the proposition that there is a a
 16 duty to disclose exists “when necessary ‘to make . . . statements made, in light of the
 17 circumstances under which they were made, not misleading.’” (Opp. at 6.) Plaintiffs,
 18 however, overlook that “it is well established that the PSLRA does not impose a duty of
 19 completeness.” *Juniper Networks*, 880 F.Supp.2d at 1066. To the contrary, the Supreme
 20 Court held that “§ 10(b) and Rule 10b-5 do not create an affirmative duty to disclose
 21 any and all material information.” *Id.* (quoting *Matrixx Initiatives, Inc. v. Siracusano*,
 22 131 S.Ct. 1309, 1317 (2011)).

24 Here, there is no plausible duty that Edalat, as a mere shareholder who was never
 25 an officer or director of Pharma Pak, had to disclose to other investors in Pharma Pak
 26 that he had sought bankruptcy protection. The allegations in the complaint are even
 27 more curious, because even if a duty of disclosure did exist, that would be a duty of
 28 Pharma Pak, and its CEO and sole director Bruce Cahill, would owe to potential

1 investors. This is particularly so as to the allegations made by Plaintiff Cullen, Scott,
 2 and Franco – each of whom invested in Pharma Pak over a year after Plaintiff Cahill
 3 invested and assumed responsibilities as CEO and sole director.

4 For the reasons above, Plaintiffs' state claims for fraud and deceit likewise fail
 5 because Plaintiffs have failed to plead the claims with sufficient particularity.
 6 Therefore, the Court should dismiss Plaintiffs' federal securities claims and state fraud
 7 claims.

8 **III. THE COMPLAINT FAILS TO STATE A CLAIM AGAINST FOR**
 9 **RICO VIOLATIONS**

10 **A. Artful Pleading Cannot Avoid The Prohibition On Using Securities**
 11 **Fraud As A Predicate**

12 Edalat's Motion revealed Plaintiffs' attempt to circumvent the Reform Act's
 13 prohibition on using securities fraud as a predicate act for a RICO claim. The attempt to
 14 use wire fraud to avoid that prohibition fails. (Motion at p. 12:7-25 – 13:1-4). The
 15 Opposition claims that the RICO claims are "not remotely connected to the sale of any
 16 Pharm Pak stock..." The SAC, however, states that, "Edalat... was simply making false
 17 promises... *in order to induce the plaintiffs to purchase stock of Pharma Pak.*" SAC
 18 at ¶76(vi) (emphasis added). This explicitly concerns the purchase of stock that would
 19 be the basis of securities fraud. Thus, Plaintiffs' RICO bases this alleged predicate act
 20 improperly on alleged wire fraud related to alleged securities fraud. Further, the conduct
 21 identified in the Opposition underlying the wire fraud only damaged the Plaintiffs in
 22 regards to their investment in the company and purchase of Pharma Pak stock. Thus, the
 23 underlying wire fraud is an inappropriate attempt to include the alleged securities fraud
 24 as a predicate act for Plaintiff's RICO claims.

25 **B. The "Drug Dealing" Allegations Are Not Predicate Acts**

26 Plaintiffs argue that Edalat engaged in "dealing in a controlled substance." But
 27 that the SAC does not allege any such dealing. Instead, the SAC alleges that Edalat
 28 "planted" THC and marijuana at the Pharma Pak offices. Although Plaintiffs cite 21

1 U.S.C. § 841, that section makes it unlawful to either “manufacture, distribute, or
 2 dispense, or possesses with intent to manufacture, distribute, or dispense, a controlled
 3 substance,” or to do the same with a “counterfeit substance.” The allegations in the SAC
 4 (¶ 100) do not meet that definition.¹

5 **C. There Is No Allegation That Any Juror Has Been Threatened**

6 Plaintiffs claim that Edalat’s text messages and emails to *parties* in this case
 7 should be considered the same threats to jurors. (Opp. 23.) That is simply a bridge too
 8 far under *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) because it is not
 9 plausible that any of Edalat’s twitter followers would be empaneled as a juror. There is
 10 no allegation that any juror has seen any of the alleged text messages or emails. We are
 11 not even at the point where there are any jurors or even a potential panel of jurors.
 12 Federal law does not criminalize, nor make as a predicate act for RICO, sending a nasty
 13 email or message (or else the Court would be flooded with similar claims).²

14 **D. There Is No Connection Between The Use of Wires and The Alleged
 15 Fraud**

16 Further, the Opposition fails to address sufficiently the SAC’s failure to allege the
 17 use of wires in a fraudulent scheme to defraud with the requisite specificity. The
 18 Opposition states that by merely listing payroll transactions, the SAC fulfills the
 19 specificity in pleading requirement. The Opposition fails to assert that the SAC
 20 specifically details how those alleged wire payments constitute a scheme to defraud.
 21 That is because the Opposition cannot do so. The SAC relies on general and conclusory
 22 allegations to establish that Edalat allegedly paid Luis Navarro to work for another
 23 company while being paid fraudulently by Pharma Pak. This does not satisfy the
 24 specificity requirement. Thus, the Court should dismiss Plaintiff’s RICO claims.

25
 26 ¹ Moreover, Ludwig Weimann testified at his deposition that Dr. Weimann—not Edalat
 27 or anyone acting on his behalf—brought liquid THC to Pharma Pak’s offices for
 28 purposes of conducting research.

² Make no mistake that counsel for Edalat does not condone sending nasty messages—
 even when in litigation. The point remains that doing so, and threatening litigation, is
 not a criminal act.

**IV. FRANCO AND CULLEN HAVE NOT PROPERLY ALLEGED
LIBEL**

Plaintiffs Franco and Cullen rely on a tweet from Edalat in which he states “You stole my comp while I was traveling. You fired my employees for turning all of you in for Manuf class1drugs. You will all face justice.” (Opp. at 24.) Although Edalat sent another tweet naming Franco and Cullen, Edalat did not name either in this tweet. Even more problematic for Plaintiffs is the fact that “‘rhetorical hyperbole,’ ‘vigorous epithet[s],’ ‘lusty and imaginative expression[s] of . . . contempt,’ and language used ‘in a loose, figurative sense’ have all been accorded constitutional protection.” *Ferlauto v. Hamsher*, 74 Cal.App.4th 1394, 1401 (1999). Edalat’s tweets are certainly lusty, imaginative expressions of contempt, full of loose, figurative language. As such, the Court should dismiss the libel claims of Franco and Cullen.

V. CONCLUSION

14 For the foregoing reasons, Defendants respectfully request that the Court dismiss,
15 pursuant to Rule 9(b) and Rule 12(b)(6), without leave to amend, (1) Plaintiffs' securities
16 fraud claims against; (2) Plaintiffs' RICO claim; (3) Plaintiffs' state law claim for
17 violation of the California Corporations Code; (4) Plaintiffs' state law claims for fraud
18 and deceit and fraud by concealment; and (5) Plaintiffs Franco and Cullen's state law
19 claim for defamation by libel against Edalat.

Respectfully submitted,

21 | Dated: January 23, 2017

FORD & DIULIO PC

By: /s/ Kristopher P. Diulio
Kristopher P. Diulio

Attorneys for Defendants PAUL PEJMAN
EDALAT; OLIVIA KARPINSKI; FARAH
BARGHI; BLUE TORCH VENTURES, INC.; and
LIWA, N.A., INC.

CERTIFICATE OF SERVICE

I hereby certify that on January 23, 2017, I electronically filed the foregoing **PAUL EDALAT'S IN SUPPORT OF EDALAT'S MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT** with the Clerk of the Court using the CM/ECF system which will send notification of such filing via electronic mail to all counsel of record.

/s/ *Kristopher P. Diulio*

Kristopher P. Diulio